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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) A-6727 (191910-1800)
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____		Application Number 09/976,604
Signature _____		Filed October 12, 2001
Typed or printed name _____		First Named Inventor Penk, et al.
		Art Unit 2143
		Examiner England, David E.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

/BAB/

Signature

Benjamin A. Balser

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

Typed or printed name

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attorney or agent of record.

Registration number \_\_\_\_\_

Telephone number

August 7, 2007

Date

attorney or agent acting under 37 CFR 1.34.

58,169

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re Application of:

Penk, et al.

Confirmation No.: 3301

Serial No.: 09/976,604

Group Art Unit: 2143

Filed: October 12, 2001

Examiner: England, Dave E.

Docket No.: A-6727 (191910-1800)

For: Mechanism for Implementing Network Discovery in a Cable Network

**REMARKS IN SUPPORT OF**  
**PRE-APPEAL BRIEF CONFERENCE**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

Applicant submits the following remarks in support of a Request for a Pre-Appeal Brief Conference.

## **REMARKS**

Applicant submits that the following clear legal and factual deficiency exists in the rejection. Namely, the previous Office Action equates "including an IP address" with "assigning a unique identifier to a transport stream of a plurality of transport streams," which are two functions that are known to be technically very different from each other. Even if the cited reference, *Teraoka*, discloses movement transparency in which "an IP address (location designator) is supplemented by a [virtual Internet protocol] VIP address that is introduced as an identifier specific to each host computer, *Teraoka* fails to disclose "assigning a unique identifier to a transport stream of a plurality of transport streams." Additionally, the Office Action uses an obviousness standard in the analysis of the rejections under 35 U.S.C. §102(e). For at least these reasons, Applicant respectfully submits that all rejections under 35 U.S.C. §102 should be withdrawn and the claims allowed.

### **I. Status**

Claims 44-48, 51-54, 59-64, and 66-69 stand rejected under 35 U.S.C. §102(e) as allegedly being anticipated by *Teraoka* (U.S. Patent No. 6,292,836). Claims 49, 50, 55-58, and 65 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Teraoka* in view of *Rao* (U.S. Patent No. 6,789,118).

### **II. Rejections of Independent Claim 59 Under 35 U.S.C. §102(e)**

Independent claim 59 is rejected under 35 U.S.C. §102(e) as allegedly being anticipated by *Teraoka* (U.S. Patent No. 6,292,836).

Independent claim 59 recites:

59. A method of mapping a digital network, the method comprising:  
*assigning a unique transport stream identifier to each transport stream of a plurality of transport streams, wherein the plurality of transport streams are transmitted from a plurality of devices included in the digital network and wherein each device of the plurality of devices transmits a plurality of transport streams;*

associating each assigned unique transport stream identifier with a particular device of the plurality of devices, wherein the particular device transmits the transport stream having the unique transport stream identifier assigned thereto;

transmitting to each device of the plurality of devices an assigned unique transport stream identifier associated therewith;

receiving a network message from multiple devices of the plurality of devices, each network message including at least one input transport stream identifier; and

using the multiple network messages to determine a hierarchy of devices for the plurality of devices.

(Emphasis added.)

***Teraoka* fails to disclose **assigning a unique transport stream identifier to each transport stream of a plurality of transport streams, wherein the plurality of transport streams are transmitted from a plurality of devices included in the digital network and wherein each device of the plurality of devices transmits a plurality of transport streams.****

Although *Teraoka* appears to disclose some types of identifiers, it seems that the identifiers represent IP addresses, including starting and ending points. Even if, assuming for the sake of argument, the IP addresses of *Teraoka* disclose device identifiers, the end points of the transport stream do not identify the transport streams themselves. Multiple transports streams, each with a unique transport stream ID, may be transported between two particular IP addresses. All such transport streams transmitted between two IP addresses in the system disclosed by *Teraoka* will have those same IP addresses assigned. However, per the instant claim, each of the multiple transport streams between two particular IP addresses has a unique transport stream ID.

Therefore, Applicant respectfully submits that *Teraoka* fails to disclose claim 59 and the claim should be allowed.

In the Response to Arguments section of the Final Office Action, the Office Action alleges that the cited element is disclosed “in column 5 of *Teraoka*[, where] it is stated, ‘where, ‘VIPAddr\_A’ stands for the VIP address of the computer A and ‘port\_A’ for the **port number assigned when ‘VendPoint\_A’ was generated by the computer A**. The same holds for ‘VIPAddr\_B’ and ‘port\_B.’” *Final Office Action*, page 10, section 32 (no emphasis added). It is clear that this only discloses identifying the end point devices of a transport stream, and not the unique transport streams themselves.

Additionally, the Office Action states that “[t]he other limitation is already discussed in the above response to the remarks and can be applied here.” *Final Office Action*, page 10, section 32. As the exact section in which this limitation is discussed is not easily identified, Applicant has assumed that the Office Action is referring to sections 26-28 in which a device identifier, an input transport stream identifier, and an output transport stream identifier is discussed. In section 28, the Office Action states that “[t]he conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference.” Claim 59, along with all other independent claims, has been rejected under 35 U.S.C. §102, which requires that the cited reference must disclose, teach, or suggest all elements/features of the claim at issue. *See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988). Applicant respectfully submits that an obviousness analysis using common knowledge and common sense of a person of ordinary skill in the art is immaterial to an anticipation analysis under 35 U.S.C. §102. Therefore, not only does *Teraoka* fail to disclose the cited claim language, but, also, an improper analysis was used in formulating the rejection. For at least these reasons, Applicant respectfully submits that all rejections under 35 U.S.C. §102 should be withdrawn and the claims allowed.

***CONCLUSION***

For at least the reasons set forth above, favorable reconsideration and allowance, or the re-opening of prosecution on the merits of the present application and all pending claims are hereby courteously requested.

Respectfully submitted,

**THOMAS, KAYDEN, HORSTEMEYER  
& RISLEY, L.L.P.**

/BAB/

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